

THE STRATTON COMMISSION AND FUTURE DEVELOPMENT OF U.S. MANAGEMENT POLICY FOR ITS EEZ

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Introduction

Over the last several months the Steering Group for the Year of the Ocean organized by the H. John Heinz III Center for Science, Economics and the Environment has been conducting a series of meetings and workshops to examine the state of U.S. marine resources and their management. The Group was comprised of a wide spectrum of ocean interests ranging from federal and state governments to the resource production and transportation industries, academia and the environmental community. Many of these interests were on opposing sides in past policy debates, but the Heinz Center process was remarkable in the shared sense of purpose by the participants to confront marine policy issues the United States faces in managing its Exclusive Economic Zone (EEZ). For legal and political reasons the Group was constrained from pursuing their work with the view to make formal recommendations, but the consensus on major themes emerging from their discussion will be evident from the upcoming release of their report and other venues for discussion of its content and the deliberations of the group.

Notwithstanding, the diversity of the group, all expressed concern about the significant challenges facing the country in managing the U.S. EEZ and its resources. There was recognition and support for the concept that the nation's economy, the quality of our marine environment, and the productivity of our marine resources are inextricably linked. There was skepticism expressed about the effectiveness of the current approaches to resource management, where neither management objectives nor the strategies to achieve them are well defined. There was concern about the adequacy of management structure and political will for establishing a more transparent and effective management process. The inadequacy of

research funding, and efforts for public education about ocean issues was a frequent topic, and the need for increased attention to those areas was supported by the Group.

While analysis of the work of the Stratton Commission was not a significant topic for the Heinz Group, the Group did characterize its own efforts as a product for use by the new Commission that would be established by the Oceans Act that has passed the U.S. Senate and is currently being considered by the U.S. House of Representatives. Further, when a House Resources Committee staff member told the Group that the Committee leadership may want to constrain the scope of the work for the Commission to improving the existing government structure, members of the Group registered strong opposition to such constraints. The Group as a whole expressed the need to make it clear that the Commission should not be constrained in any way regarding the scope of its deliberations on U.S. marine resource management need and policy. As was clear from the testimony given by several members of the Heinz Group who testified at the last House Hearing on the Oceans Act, the Group favors maintaining the independence of the new Commission from any oversight by the Executive Branch.

Early in 1996, the Center for Marine Conservation (CMC) commissioned a paper from Michael Weber (Weber, 1996), a former CMC Vice President for Programs, to examine in part the potential for establishing a new Stratton-type oceans commission and other mechanisms for reforming U.S. marine policy for the EEZ on the occasion of the Year of the Ocean. This paper was subject to limited distribution in Congress and the Executive Branch, and its conclusions were the subject of presentations by Mr. Weber and others. Mr. Weber's conclusions echo

those of the Heinz Group. He strongly supported the need for a new effort to update the work of the Stratton Commission, recognizing the difficulty of achieving the political conditions for establishing a new Commission with needed authority and resources, and for ensuring the effectiveness of its work. This paper draws heavily on Mr. Weber's work.

In his introduction, Mr. Weber noted: "A survey of the last thirty years of ocean policy in the United States shows that changes in policy have been caused generally by external events, such as the Prince William Sound oil spill or overfishing by foreign fleets off New England. The principal and perhaps only, exception to this rule is the so-called Stratton Commission, whose 1969 report *Our Nation and the Sea* led to the creation of the National Oceanic and Atmospheric Administration (NOAA) and contributed greatly to the passage of the Coastal Zone Management Act." In the following I will emphasize that while some of the conditions that made success of the Stratton Commission possible are present for the proposed new Commission in the Oceans Act, others are lacking.

For example, while recent public polling suggests that the public is in strong favor of conserving marine resources and protecting the marine environment, we should be concerned about the depth of understanding and commitment by both the public and policy makers for a lengthy and possibly significant policy review. Evidence for such concern can be illustrated in two recent experiences. First, during the course of the Heinz Group's deliberations, in the International Year of the Ocean, while plans were proceeding feverishly for a National Ocean Conference (originally promoted as a White House Conference) in June, and Congress is preparing to pass major marine legislation in the Oceans Act, the White House chose to celebrate Earth Day with the President and Vice President of the United States working on a hiking trail in West Virginia. Whether consideration was given to making the White House venue for Earth Day on the Coast, I don't know.

Alone such an incident would be insignificant, but for many of us who have worked to elevate the interest of the Executive Office of the President (EOP) in ocean issues, it was an additional confirmation, from extensive experience, that these issues do not have high

visibility in the Executive Office of the President. NOAA staff have complained that is the case in pursuing their issues in this Administration's environmental agenda. On the other hand, recent staff changes in the President's Council on Environmental Quality has increased dedicated staff time to marine environmental issues. One of the popular notions regarding the reasons for the success of the Stratton Commission was that its work enjoyed significant support from the White House. If that is a requirement, we need to work hard to convince the Clinton Administration that our issues are worthy of its concern and support.

Second, I was a guest on a recent radio talk show where I discussed the deliberations of the Heinz Group, and emphasized the problem that the United States of America had no plan for administration of the EEZ, and that we lacked a lead agency for its management comparable to lead agencies for public lands. One caller who identified himself as a commercial fisherman, and a marine lawyer for 20 years, argued that such an agency existed, the "National Oceanographic and Atmospheric Administration" (sic), and that NOAA essentially had omnibus legal authority for the EEZ, including that for minerals and energy development. This assertion of course is factually wrong, and indeed in practice NOAA regularly does not assert leadership in ocean policy within the Executive Office of the President.

Public understanding about the U.S. management regimes and needs is not optimum for informed citizen involvement in developing effective marine policy. This is troublesome in that strong Congressional support for the work of the Stratton Commission also seemed important to its success. Without a knowledgeable citizenry expressing their concern to their elected policy makers, it is questionable whether the needed level of support will be forthcoming from the 105th and 106th Congresses.

The Stratton Commission

As Weber notes in his paper: "[T]he work of the Stratton Commission and the White House Marine Sciences Council in the late 1960s was the culmination of a process begun in the late 1950s with the convening of the National Academy of Sciences Committee on

Oceanography (NASCO), which issued several reports on national interests and needs in ocean science, technology, and resource development. According to Wenk (1972 and 1995), these reports and the promotion of ocean interests in Congress by the chairman of NASCO fostered the development of a group of Senators and Congressmen who became advocates for the oceans in the 1960s, including Senators Magnuson, Hollings and Bartlett, and Congressmen Bonner, Lennoh, Rogers, and Hanna.” “With the passage of the Marine Resources and Engineering Development Act of 1966, Congress established the Stratton Commission and the Marine Sciences Council - the former to resolve the issue of bureaucratic organization of Federal oceans efforts. The report of the Stratton Commission was eagerly awaited by a growing group of members of Congress -a factor that contributed greatly to the actual implementation of some of the Commission’s major recommendations.”

In examining what made the Stratton Commission successful and what would contribute to the success of future such efforts, Weber observed: “One theory of policy change described by Knecht, Cicin-Sain and Archer (1988) holds that change occurs when three streams of activity come together at the same time. In the first stream, problems come to the fore due to a crisis or poor performance by programs. Solutions to these problems, meanwhile, develop in a kind of primeval policy soup made up of conferences, hearings, conversation, etc. Solutions survive if they are technically feasible, suit dominant values and the prevailing national mood, can be funded, enjoy political support, and can respond to opposition. But these two streams will go nowhere without the energy of the political stream, which itself swings with the national mood, national elections, the composition of Congressional committees and interest group campaigns. All three streams can be influenced, but they all must flow together if change is to occur.”

These “streams” came together for the Stratton Commission: a general lack of a federal administrative regime for the oceans, high level political support by the White House and the Congress for action, and solutions that survived in part in the ensuing political debate. The success of the Stratton Commission effort once it was initiated is widely

attributed to its strong mandate, the energy and skill of its chair and staff, and the overall leadership of Vice President Humphrey in promoting proactive revision of U.S. marine policy to meet the emerging challenges to the nation.

In evaluating why subsequent efforts failed to substantially reform ocean policy, Weber (1996) identified several causes, including limits to the scope of deliberations in those efforts and the lack of top-level political support. These are issues that constrain the current effort to launch the proposed new Commission.

The Oceans Act

There are similarities and disturbing differences between the work of the Stratton Commission and the current situation that may greatly affect the success of a new Commission. There appears to be emerging consensus from the Heinz Center process and other fora that the challenges facing U.S. management of the EEZ exceed the capacity of our present policy and management regimes. That, coupled with public support, although its understanding and the depth of support could be strengthened, suggests the need to make a course adjustment after 30 years.

Fortunately there is a core group of Congressional leaders who parallel those that supported the work of the Stratton Commission. That group, however, needs to be strengthened in numbers and otherwise assisted in fulfilling its role.

Unfortunately, there is a great danger that a new Commission will not be established, or be established by the 105th Congress unwisely with limitations on the scope of its deliberations, or that it will be inadequately funded. A Commission that is not capable of addressing issues that have been clearly identified as part of the needed agenda for such work will not be the subject of investment by the growing and diverse oceans communities. Such a Commission will ultimately not receive the attention and support of its work needed to ensure it will be considered a source for major policy change.

In addition, the need for securing leadership from the Executive Branch is confounded by three

problems. First it is not clear that there is a strong interest in the Executive Office of the President for the substantive issues and challenges, and therefore the commitment to doing the work needed to support a comprehensive review of U.S. ocean policy and take needed action. While much effort was given, for example, in preparation of the national conference in June, it had the aura of event planning rather than as part of an overall strategy for policy reform.

Second, similar to the situation that called for strong leadership of Vice President Humphrey for the successful Marine Sciences Council, there is a strong need for Vice President Gore to assume such leadership to follow through on the promise of the Oceans Act. [Gore seems uniquely suited to the task. Ocean research and management is a highly technical exercise which is within the apparent personal interests of the Vice President, and the development and conservation of ocean resources promises exciting new opportunities for the economy and health and well-being of the American people. Unfortunately, the role of the Vice President in this effort may be impeded in the highly partisan, national political atmosphere from which we suffer at the end of the century. There is reticence by members of the 105th Congress to give such a potentially highly visible platform to a Democratic candidate for the Presidency. One solution would be to set up Executive Branch leadership in this effort by administrative action, but others worry that taking such an initiative before passage of the Oceans Act will threaten its passage. This is a clear case of partisan politics getting in the way of the national interest.

Third, while human population demands on ocean resources and assaults of pollution on the marine environment are increasing at a worrisome rate and level, there are strong political and philosophical issues that interfere with the further development of solutions and management regimes. In particular, the U.S. Department of State, and the Department of Defense are very concerned that the principles underlying the Law of the Sea and freedom of ocean navigation not be trammled, or that operations important to national security not be compromised by practices that may restrict current practices for ocean navigation or use. Notwithstanding substantive resource management needs, the concerns of State and Defense often dominate high-level policy decisions, frequently

behind closed doors and out of sight of public process. There is recurring debate on the application of U.S. domestic law to the EEZ and to U.S. operations on the high seas, including with respect to the National Environmental Policy Act and the Endangered Species Act. The recent decision by President Clinton to request the International Maritime Organization's cooperation in protecting right whales was important in this context in that it establishes priority for marine conservation in U.S. ocean policy, requiring navigational protocols for protecting the marine wildlife. I expect the Department of Defense to work to undermine the policy and to secure a defeat to the President's proposal to the IMO, but in any case it is clear that we as a nation have to resolve conflicting perspectives on navigation and defense if we are to make needed progress in establishing effective management regimes for our marine territory and resources. The creation of the Commission by the Oceans Act is a major opportunity to start a national conversation on those issues, but unless the White House uses its authority to bring State and Defense to the table significant progress will not be possible.

Federal Government Organization for EEZ Management

The most critical issue facing the Commission will be how the United States of America will effectively govern its EEZ, including identifying what changes are needed to ensure adequate administrative authority, financial resources, and political will to do the job. For years I have advocated for consolidation of marine management authorities in NOAA as a means to a more coordinated and effective management regime for the U.S. EEZ, but I have been swimming against the political current. While there is considerable merit in establishing a lead federal agency for EEZ management, with lead authority for management coordination and policy development, I no longer believe that effort can simply be achieved through an expanded and strengthened NOAA.

When NOAA was finally established in the Nixon Administration, it was weaker in execution than in original concept. The agency was charged with a major role in developing atmospheric science, and it has an excellent reputation for the quality of its scientific work. There is, however, regular concern

among its ocean constituents about the “wet side” of NOAA, and its capacity and will to step up to the plate as a resource management agency.

The scientific culture of NOAA has resulted in great administrative stability. As a non-government organization representative principally engaged in advocacy for strengthened conservation policy, I can relate that changes in administrations rarely result in significant policy changes or procedures within the agency since my experience starting with the Ford Administration. NOAA exhibits remarkable bureaucratic stability, and NOAA personnel are generally regarded as dedicated people, well qualified for their work, who produce quality products and services.

Some of the disappointments with NOAA’s performance may be attributed to its placement within the Department of Commerce. With the notable exception of Secretary Brown, and more recently with the intercession of Secretary Daley regarding the recent right whale decision, Commerce leadership generally appears to be disengaged from the agency except when its efforts to carry out its stewardship responsibilities conflict with Departmental economic or political interests. NOAA’s program and budget needs are seemingly not priorities in the Department and its overseers in the Office of Management and Budget with substantially different interests, and the bureaucratic gap further isolates the agency’s policy concerns from visibility within the EOP.

Unfortunately too, the sources of NOAA’s strengths may be the roots of its weaknesses. While NOAA was established and functions well as an agency to develop the science, it is increasingly called to perform stewardship and management responsibilities for ocean places and resources. Scientists are trained to be reluctant to come to closure on cause and effect, and on projecting policy in the face of a lack of information. Such qualities make for good science, but can lead to gridlock in developing and implementing management policy. NOAA struggles with making and implementing management decisions, and its leadership is extraordinarily sensitive to political pressure from Congress compared, for example, to those facing similar responsibilities in the Departments of the Interior and Agriculture, and the Environmental Protection Agency.

NOAA regularly operates in violation of administrative law. While mounting administrative responsibilities and the lack of needed staff and funding resources certainly contribute to this problem, the agency is consistently late in meeting legislative and administrative deadlines. The agency is averse to making specific decisions within specific time frames. Their response to controversy is often to unduly or illegally prolong process, and process is frequently reinvented in the face of controversy. The results are that decisions delayed, like justice, are direction denied for effective and reliable management regimes. And then, management decisions made are frequently revisited in the heat of political pressure.

Failure to run an administratively tight ship makes the agency a prime candidate for litigation, especially for those who see significant public relations benefit in taking the agency to court, notwithstanding there may be more traditional or better avenues for solving management problems. Perhaps the most troublesome result of the culture that has developed within the agency is a drift to a seeming preference to rely on litigation for political cover in carrying out statutory responsibilities. Through the years NOAA staff and leadership have made it clear that they would welcome more litigation on politically difficult issues. With litigation, the agency has an opportunity to absolve itself of responsibility for undertaking politically unpopular administrative processes or making unpopular decisions. Once in this mindset the appeal may become inescapable; the agency can avoid political blame and transfer it to a statute or to the statute’s supporters, and it can then use the complex milieu of administrative law and litigation to provide greater flexibility to chart an agency course notwithstanding statutory direction or stewardship responsibility. Threatening a wayward agency with litigation loses its punitive and advocacy value if the agency welcomes intercession by the courts with the view to use that litigation to try to demonstrate that it is the demands of the law not the agency that is at fault. The checks and balances of our system of government are considerably eroded when adherence to law loses relevance.

After supporting expansion and consolidation of NOAA to fill a need for better leadership in ocean management, I have concluded that this course will be an impediment to the goal of establishing the needed capacity to govern our EEZ and proactively manage

its resources to meet the challenges of the next century. The new Commission should have the authority to carefully examine this issue. And, if upon review it concurs that a lead ocean agency is needed, I would argue that agency should essentially be recreated from current authorities, which are scattered among a number of agencies in addition to NOAA, to one that is explicitly given as its prime directive to provide for stewardship of the nation's marine resources, using, of course, the best scientific information available for making its decisions. This may from one perspective be a reorganization based on the current NOAA, but a new mandate for future leadership is required unless we are satisfied with the current direction.

Management Strategies for the U.S. EEZ

As noted above, the United States lacks, and in the author's opinion, needs a plan for its EEZ. Currently the EEZ is managed as what is in modern terms considered a commons (although the post-Hardin concept of what constitutes a commons is in stark contrast with the high degree of social organization used to manage commons resources in the 18th century (Hanna, 1990)). Under the current management regime, selected management functions for the EEZ have been dealt to a variety of agencies with inadequate provision for resolution of conflicts. There is no formal coordination and leadership of executive branch management actions, and no overall framework for conducting general policy or resolving conflicts (other than the overarching foreign policy and defense concerns noted above that are aired in the National Security Council).

Increasingly, uses are being proposed for the EEZ and its resources for which no agency has adequate authority to control. In recent testimony before the House of Representatives (McManus, 1998), I noted, for example, the lack of adequate authority to address the development of pharmaceuticals from the ocean, products that may become the single most economically valuable resources taken from the ocean.

Under current growth rates human population may almost double by mid-next century, with more people living on or near the coasts than are alive today. The pressures on the coastal and marine environment will be enormous, and choices for meeting the needs of

people and trying to conserve marine biological diversity will be critical to the future of humanity, and the biosphere. For those concerned with protection and conservation of nature, and the well-being of people, the course is clear. We need to both increase production and provision for direct human needs, and protection for nature, and it is unlikely these needs will be met by happenstance.

To fulfill its promise the Commission created by the Oceans Act will have to address the need for a new governance framework. I predict there will be a surprising coalition of competing interests supporting that work, but I worry that the recognition for the need for reform is outpacing the interest or commitment of our political leaders.

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